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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/075,857	02/14/2002	Kenneth Fred Bailey	4148.4	9430

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EXAMINER

LILLIS, EILEEN DUNN

ART UNIT	PAPER NUMBER
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3652

DATE MAILED: 01/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/075,857 Examiner Johnson, R.B.	K.F. Bailey Art Unit 365	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01/14/04
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-75 is/are pending in the application.
- 4a) Of the above claim(s) 3-7, 9-12, 18-22, 29-30 is/are withdrawn from consideration. ~~23-35, 41-44, 45-75~~
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) * 1, 2, 8, 13-17, 23-28, 31-32 & 36-40 is/are rejected. *
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>5</u> | 6) <input type="checkbox"/> Other: _____ |

OFFICE ACTION

1. The documents submitted in the IDS (paper no. 2 filed on 02/14/02) have been considered.
2. Applicants election, without traverse, of the Group I invention (claim 1-41 and 47-60) are noted. Applicants election of the species designated as C (Figs. 7-9), with traverse, are also noted. Applicants statement that claims "1-41 and 47-60 appear to be pertinent to the elected species C" is consider in this action as being an assertion by applicants that said claims are "readable" on the elected species (see requirement in section 6 of office paper (no. 3) dated 12/15/2003).

First, the traverse is void of merit because, inter alia' applicants have not averred the designated species are not patentably distinct. Second, the comments in the traverse regarding opposition to the inclusion of Fig. 9 with the identification of species C is clearly undermined by applicants own arguments.

If applicant's arguments are acceptable then it is clearly proper to include Fig. 9 in identifying EACH of the designated species. Third, applicants comments regarding the lack of mutually exclusive characteristics of the respective species are seriously flawed. Note for example: claimed element 22' (Figs. 7-8) in species C is not shown in any of species A or B; claimed elements 28-29 in species B (Fig. 6) is not shown in any of species A or C; and claimed elements 22-23 (Fig. 3) in species A is not shown in either species B or C. Fourth, the degree of burden on an examiner to examiner any patent application with a plurality of claimed inventions therein is determined by the Examiner. Fourth, it is submitted that it is a very serious burden on an Examiner to

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examine an application with 75 claims including at least 54 claims drawn to three (3) distinct species with a multitude of claimed modifications thereto.

The restriction requirement of the claimed designated species is deemed proper and is maintained, subject to rejoinder if a generic claim is found allowable.

3. It appears that applicants have suggested that claims 1-41 and 47-60 are “pertinent”/readable on the elected species. The Examiner strongly disagrees. In addition to a multitude of other claims that are not considered to be readable on elected species C, it is submitted that at least claims 3 and 4 are not readable on any of the designated species.

The following claims are not considered to be readable on elected species C (Fig. 7-9): 3-7; 9-12; 18-22; 29-30; 33-34; 41; and 47-60. The above noted claims are held withdrawn as not be drawn to the elected species/invention. An effective challenge to the holding of the withdrawn claims must specifically point out the claimed element(s) in Figs 7-9 of the drawing and/or the location in the specification that specifically reference the claimed element(s)/limitation in the 10' (species C) apparatus.

The requirement is still deemed proper and is therefore made Final.

4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the “helix rotor assembly” (claim 1 and claim 2-41 dependent therefrom; and the “Planar” rotor assembly, e.g. claim 5) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

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Corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

5. The "exploded" views in Figs. 5 and 6 must be bracketed.
6. The specification is objected to because it is not apparent the instant application disclose a helical and planar rotor assembly. The vanes 21' of elected species C do not appear to be either helically shaped or helically mounted on shaft 12'.

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 7, 10 and 15-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The language "between about" to define parameters is considered to be indefinite because no particular range is define.

Although this rejection is limited to the claims deemed readable on the elected species, it should be apparent the rejection would also apply to many of the withdrawn claims.

- 8a. Applicants claim for benefit of provisional application 60/269,091 filed on 02/15/2001 is noted.

9. In so far as the claim(s) are definite and understood, the following rejections on the prior art are being rendered. The applied references may, but not necessarily, respond to the indefinite and/or inadequate disclosure matters noted. Such matters will

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not be specifically addressed in the rejections. It appears some of the applied references respond to the requirement of the withdrawn claims.

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

11. Claims 1-2, 13 and 31-32 are rejected under 35 U.S.C. 102(b) as being anticipated/lacking novelty by Buck.

For example note corresponding claimed elements: D; E; f, F; f' (re claims 31-32).

12. Claims 8, 14-17, 23-24, 26-28 and 38 are rejected under 35 U.S.C. 102(b) as being anticipated/lack novelty by Wigram (IDS #8).

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The vanes 7 can be adjusted to any angle desired via members 7A-7C, per Fig 3 and the paragraph bridging columns 2 and 3; any section of the vane 7 to either side of the pivot axis 7C of the vane, per se, as stated by applicants in their specification form the recited governor means re claim 23; 7B re claim 26; 6A, 6B and 7A-7C form the recited "trough-forming"/channel structure re claim 27.

13. Claim 36 is rejected under 35 U.S.C. 102(b) as being anticipated by Rickoff, note corresponding claimed elements 18, 8, 18, 8, 44, 42, 44 (mounting rods for 42).

14. Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over either DE Wittie or the Swedish patent no. 43, 587 to Morck (hereafter N) in view of Rikoff.

N and DE Wittie show the claimed structure except for an explicit showing of a structure/rods for mounting the respective vanes to the rotor. Rickoff described above shows rod 44 for mounting vanes 11 to a rotor 8. It would be obvious to construct DE Wittie and N vanes to their respective rotors with any conventional means to attach the vanes 11 to the rotor because it is a necessary expedient for an operative device.


15. References C, E, F and G show helical vane 16; planar vanes 73; speed governor 66; and non radial vanes 11, respectively.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to R.B. Johnson whose telephone number is (703) 308-2565. The examiner can normally be reached on Monday thru Thursday from 6:30-9:30 A.M. to 5:00-8:00 P.M.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, E.D. Lillis, can be reached on (703) 308-3248. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


EILEEN D. LILLIS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

Johnson/hy
March 4, 2004